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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIUS JACKSON,

Defendant and Appellant.

B213897

(Los Angeles County
Super. Ct. No. MA040859)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Charles A. Chung, Judge. Affirmed with directions.

Patrick Morgan Ford, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Julius Jackson appeals from the judgment entered following his plea of no contest to assault with a deadly weapon or by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1))¹ and his admission that he previously had been convicted of a felony within the meaning of the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). The trial court sentenced Jackson to six years in prison. We direct the trial court to correct its award to Jackson of presentence custody credits and, in all other respects, affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*²

Between 5:00 and 6:00 p.m. on or about July 9, 2007, Kenneth Elliott was at the Winco Store on Avenue K-4 in Lancaster. He had gone to the store with his girlfriend, Winter Clay, his girlfriend's sister, Juana Clay, and friends of the Clay sisters, Tiana Tyus and Raina Dorsey. Elliott's brother-in-law, Dartanyian Clay, and Erica Moore went to the store in a separate car. While the group was in the store, Dartanyian³ became involved in a confrontation with Jackson. Elliott left the check-out line, approached Dartanyian and tried to get Dartanyian to calm down. He convinced Dartanyian and Moore to leave the store, then returned to the check-out line to pay for his merchandise. After paying for their purchases, Elliot, the Clay sisters, Tyus and Dorsey, left the store.

Elliott walked toward his car carrying two cases of soda, one in each hand. His girlfriend, girlfriend's sister and their friends were walking approximately five feet behind Elliott. When he was approximately 50 feet from the store entrance, Elliott was approached by Jackson. Jackson, in an angry tone of voice, asked Elliott, “ ‘So, what’s up?’ ” Jackson then took a swing at Elliott and said, “ ‘This is for your crab ass brother.’ ” Jackson missed Elliott on the first swing. Elliott was then hit from behind, or, as he stated, was “blind sided.” Elliott could not remember anything after that. He woke

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The facts have been taken from the transcript of the preliminary hearing.

³ We refer to Dartanyian and other members of the Clay family by their first names not out of any disrespect but for the sake of clarity.

up later that night in a hospital. As a result of the blow, Elliott suffered bruises and scratches to his face and a broken blood vessel in one of his eyes.

Juana Clay was in the check-out line when she saw Dartanyian and Jackson “get into a confrontation.” Juana heard “a lot of commotion” and when she and Elliot stepped out of line to see what was going on, she saw Dartanyian and Jackson arguing. Juana and Elliot went to the area of the store where the argument was taking place and told Moore she should leave the store. Moore and Dartanyian took Juana’s advice and left the store. Juana and Elliot then returned to the check-out line to pay for their merchandise. As she was waiting to pay for her purchases, Juana saw Jackson on the telephone. He then “look[ed] around him” and left the store.

As Juana and the others were leaving the store, Elliott was some distance ahead of them. Juana saw Jackson approach Elliott from the left-hand side and say something. After Elliott responded, Jackson took a swing at Elliott. Elliott ducked and, as he did so, he slipped. Jackson swung again, this time hitting Elliott in the head. Jackson then repeatedly hit Elliott in the head as Elliot fell to his knees in a “praying position.” Elliott attempted to cover his face with his forearms as Jackson repeatedly hit him in the back of the head and temple. Juana and her companions ran toward the two men. As they got closer, Jackson looked up and said, “ ‘You bitches better back up or you will be next.’ ” Juana and the other women backed up, but all yelled at Jackson to get off of Elliott. When Jackson finally did so, Elliott stood up, staggered for a moment, then fell to the ground, unconscious.

Elliott’s girlfriend, Winter Clay, was with him and the others at the Winco Store. After the group had left the store, Jackson approached Elliott and took a swing at him. Winter walked faster in an attempt to catch up with Elliott, who was walking some distance ahead of her and the others. After Jackson took a swing at him, Winter saw Elliott slip, so that his back was to Jackson. At that point, Jackson took “[Elliott] by his shirt and was hitting him in the head.” As the women walked up, Jackson said, “ ‘You bitches better back the fuck up before I fuck you up next.’ ” Winter and the others “backed up a little bit” and Jackson let Elliott go. Elliott “ran in like a slow kind of

motion” and “that’s when some other guy, . . . came from the side [and] hit [Elliott] in the head.” Jackson then came back and hit Elliot again, causing him to fall to the ground. After Elliott had fallen down, Jackson hit and kicked him a few more times, then left. As he was leaving the area, Jackson stated, “ ‘This is for your crab ass home boy.’ ”

Winter approached Elliott to see if he was all right. He was unconscious and his eyes were “like kind of shut.” Within approximately 10 minutes an ambulance arrived and transported Elliott to the hospital. After he was released from the hospital, Elliott was bedridden for approximately two weeks. He was unable to function normally for close to a month.

2. Procedural history.

In an information filed February 21, 2008, Jackson was charged with one count of “assault by means likely to produce great bodily injury” in violation of section 245, subdivision (a)(1). It was further alleged that Jackson inflicted on Elliott great bodily injury (§ 12022.7, subd.(a)) and that Jackson had suffered a prior conviction for a serious or violent felony within the meaning of section 667, subdivision (a)(1) and the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). Finally, it was alleged Jackson had suffered two prior convictions for which he served prison terms within the meaning of section 667.5, subdivision (b).

At proceedings held on December 12, 2008, the trial court indicated it was its understanding that Jackson wished to enter a plea. The trial court stated that Jackson was to plead no contest to count one, the assault, and admit the Three Strikes prior conviction. In exchange, he would be sentenced to the mid-term of three years in prison, doubled to six years pursuant to the Three Strikes law. All other charges and allegations would be dismissed.

After waiving his right to a court or jury trial, his right to confront and cross-examine the witnesses against him, his right to subpoena witnesses and present a defense, and his privilege against self-incrimination, Jackson pleaded no contest to “a violation of . . . section 245[, subdivision] (a)(1), a felony,” and admitted previously having been convicted of a felony within the meaning of the Three Strikes law. After Jackson entered

the plea, the trial court stated: “The court finds the defendant has expressly, knowingly, understandingly and intelligently waived his constitutional rights and that his plea and admission are freely and voluntarily made with an understanding of the nature and consequences and that there is a factual basis.” The trial court then accepted the plea and admission and indicated that Jackson stood “convicted at [that] time.”⁴

The trial court sentenced Jackson to three years in prison for his conviction of assault, then doubled the term to six years pursuant to the Three Strikes law. The court imposed a \$1,200 restitution fine (§ 1202.4, subd. (b)), a suspended \$1,200 probation revocation restitution fine (§ 1202.45), and a \$20 court security fee (§ 1465.8, subd. (a)(1)). The trial court awarded Jackson presentence custody credit for 344 days actually served and 20 percent, or 68 days of good time/work time.

Jackson filed a timely notice of appeal and request for a certificate of probable cause on February 3, 2009. The trial court granted his request for a certificate of probable cause on February 3, 2009.

This court appointed counsel to represent Jackson on appeal on April 22, 2009.

⁴ Before taking Jackson’s plea, the trial court and Jackson engaged in the following colloquy: “The Court: . . . Have you discussed the charges, the facts, your rights and any defenses with your lawyer? [¶] [Jackson]: Yes, sir. [¶] The Court: All the rights I’m about to advise you of apply not only to the charge but also to the allegation that you suffered a prior strike conviction. [¶] You have the right to a jury trial. 12 people listen to the evidence and cannot convict unless all 12 unanimously agree the People had proven their case beyond a reasonable doubt. [¶] Do you understand that right and waive that right? [¶] [Jackson]: Yes, sir. [¶] The Court: You have the right to confront and cross-examine witnesses against you. [¶] Do you understand that right and waive that right? [¶] [Jackson]: Yes, sir. [¶] The Court: The right against self-incrimination. That means no one can force you to testify against yourself. [¶] Do you understand that right and waive that right? [¶] [Jackson]: Yes, sir. [¶] The Court: Then the right to put on a defense. That means you can testify and subpoena witnesses for free. [¶] Do you understand that right and waive that right? [¶] [Jackson]: Yes, sir. [¶] . . . [¶] The Court: Has anyone threatened you or made any promises to you to force you to plead? [¶] [Jackson]: No. [¶] The Court: Are you pleading freely and voluntarily because you feel it is in your best interest to do so? [¶] [Jackson]: Yes, sir.”

CONTENTIONS

After examining the record, counsel for Jackson filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.⁵ By notice filed May 21, 2009, the clerk of this court advised Jackson to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider.

On June 2, 2009, Jackson submitted a supplemental brief in which he argued that his representation by counsel in the trial court had been ineffective. Initially, Jackson urged his trial counsel failed to disclose to him all the pertinent evidence against him and, as a result, he did not understand all of the charges alleged in the information. He asserted this error made his plea involuntary and “not intelligently” made. Jackson further asserted his counsel was not available and that “communication was down to zero.” Jackson alleged that, “[d]uring the judge[']s judgment on Dec. 12th 2008, counsel was talking to [him] & telling [him] what to say which prevented [him] from hearing what the judge was saying” He asserted this too made his plea involuntary. He indicated it was not until after he entered his plea that he discovered the crime to which he pled, assault by means of force likely to produce great bodily injury, is not a “strike” offense. Had he known this, he might not have entered the plea agreement. In addition, he contended his trial counsel failed to move for a continuance “to present character witnesses, prepare [for] sentencing, [and] investigate [and] present meaningfull [sic] arguments to the sentencing judge.” Finally, Jackson asserted trial counsel failed to provide a defense at the preliminary hearing by challenging the dramatically different stories various witnesses testified to. Under these circumstances, Jackson believes he

⁵ In a letter filed June 17, 2009, appellate counsel indicated the trial court had miscalculated Jackson’s actual presentence custody credit by one day and had limited his presentence good time/work time credit to 20 percent, awarding him only 68 days rather than the 172 days to which he is entitled. (*People v. Thomas* (1999) 21 Cal.4th 1122, 1125.) Counsel requested this court to hold in abeyance Jackson’s appeal until the trial court ruled on his motion. As stated in our order of July 9, 2009, we held the appeal in abeyance until August 3, 2009. As it appears the trial court has not yet ruled on counsel’s motion to correct Jackson’s presentence custody credits, we will now direct it to do so.

should be allowed to withdraw his plea so that he may negotiate a more lenient sentence or be given the opportunity to go to trial.

DISCUSSION

“In assessing claims of ineffective assistance of trial counsel, we consider whether counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms and whether the defendant suffered prejudice to a reasonable probability, that is, a probability sufficient to undermine confidence in the outcome. [Citations.]” (*People v. Carter* (2003) 30 Cal.4th 1166, 1211; see *Strickland v. Washington* (1984) 466 U.S. 668, 694.) If the defendant makes an insufficient showing with regard to either component, the claim must fail. (*People v. Holt* (1997) 15 Cal.4th 619, 703.)

Here, the record reflects Jackson was at the preliminary hearing and heard the evidence against him. Although there were some discrepancies in the various witnesses’ testimony, they were not substantial.

A review of the record also indicates Jackson was adequately advised of his rights by both his trial counsel and the trial court before he entered his plea. Nothing in the record indicates his communication with his counsel was “down to zero.” When the trial court asked Jackson if he had discussed the charges, his rights, possible defenses and the consequences of his plea with his counsel, Jackson replied, “Yes, sir.”

Review of the record also contradicts Jackson’s assertion that, at the time he entered his plea, he did not hear the trial court’s advisements because his counsel was telling him what to say. The record indicates that each time the trial court asked Jackson if he understood he was giving up a particular right or would be subject to a particular restriction, Jackson unequivocally responded, “Yes, sir.”

Also without merit is Jackson’s contention that, had he known the crime with which he was charged, assault by means of force likely to produce great bodily injury, is not a strike offense, he might have attempted to negotiate a more lenient sentence or gone to trial. However, it is unlikely Jackson could have negotiated a more lenient sentence. For the offenses charged in the information, Jackson faced a sentence of up to 18 years in

prison. Instead his trial counsel negotiated a sentence for one-third of that, or six years in state prison.

APPELLATE REVIEW

We have examined the entire record and are satisfied that Jackson's counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The trial court is directed to award Jackson presentence custody credit for 345 days actually served and 172 days of good time/work time, for a total of 517 days. A corrected copy of the abstract of judgment is then to be forwarded to the Department of Corrections. In all other respects, the judgment is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.